

TITLE 77: PUBLIC HEALTH
CHAPTER 1: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER c: LONG-TERM CARE FACILITIES

PART 389

AUTHORIZED ELECTRONIC MONITORING IN LONG-TERM CARE FACILITIES CODE

Section

389.100	Definitions
389.105	Incorporated and Referenced Materials
389.110	Authorized Electronic Monitoring
389.115	Consent of the Resident
389.120	Consent of the Roommate
389.125	Cost and Installation
389.130	Signage
389.135	Obstruction of Electronic Monitoring Devices
389.140	Dissemination of Recordings

AUTHORITY: Implementing and Authorized by the Authorized Electronic Monitoring in Long-Term Care Facilities Act [210 ILCS 32].

SOURCE: Adopted at 46 Ill. Reg. _____, effective _____.

Section 389.100 Definitions

"Act" means the Authorized Electronic Monitoring in Long-Term Care Facilities Act.

"Authorized electronic monitoring" means the placement and use of an electronic monitoring device by a resident in his or her room in accordance with the Act.

"Department" means the Department of Public Health.

"Electronic monitoring device" means a surveillance instrument with a fixed position video camera or an audio recording device, or a combination thereof, that is installed in a resident's room under the provisions of this Act and broadcasts or records activity or sounds occurring in the room.

"Facility" means an intermediate care facility for the developmentally disabled licensed under the ID/DD Community Care Act that has 30 beds or more, a facility licensed under the MC/DD Act, a long-term care facility licensed under the Nursing Home Care Act, or

A facility that provides housing to individuals with dementia, as dementia is defined in Section 3 of the Alzheimer's Disease Assistance Act (Section 5 of the Act), including:

A supportive living program setting with dementia care units, as provided for in Subparts B and E of 89 Ill. Adm. Code 146;

An Alzheimer's disease management center alternative health care model licensed under the Alternative Health Care Delivery Act;

An Alzheimer's unit in an assisted living establishment licensed under the Assisted Living and Shared Housing Act, and as provided for in Section 295.4060 of 77 Ill. Adm. Code 295.

"Resident" means a person residing in a facility.

"Resident's representative" has the meaning given to that term in:

Section 1-123 of the Nursing Home Care Act if the resident resides in a facility licensed under the Nursing Home Care Act;

Section 1-123 of the ID/DD Community Care Act if the resident resides in a facility licensed under the ID/DD Community Care Act; or

Section 1-123 of the MC/DD Act if the resident resides in a facility licensed under the MC/DD Act; (Section 5 of the Act)

Section 10 of the Assisted Living and Shared Housing Act if the resident resides in an Alzheimer's unit in an establishment licensed under the Assisted Living and Shared Housing Act; or

For a resident of a dementia care unit of a supportive living program or in an Alzheimer's disease management center alternative health care model, a person other than the owner not related to the resident, or an agent or employee of a facility not related to the resident, designated in writing by a resident to be his or her representative, or the resident's guardian.

Section 389.105 Incorporated and Referenced Materials

- a) The following standards are incorporated in this Part:

- 1) National Fire Protection Association (NFPA) 101 Life Safety Code (2012), which may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02169
 - 2) National Fire Protection Association (NFPA) 70, National Electric Code, (2011), which may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02169
 - 3) International Building Code (2012), which may be obtained from the International Code Council, 4051 Flossmoor Road, Country Club Hills, Illinois 60477-5795
- b) All incorporations by reference of the standards of nationally recognized organizations refer to the regulations and standards on the date specified and do not include any editions or amendments subsequent to the date specified.
- c) The following statutes and State regulations are referenced in this Part:
- 1) State of Illinois statutes:
 - A) Authorized Electronic Monitoring in Long-Term Care Facilities Act [210 ILCS 32]
 - B) Nursing Home Care Act [210 ILCS 45]
 - C) MC/DD Act [210 ILCS 46]
 - D) ID/DD Community Care Act [210 ILCS 47]
 - E) Illinois Public Aid Code [305 ILCS 5]
 - F) Alzheimer's Disease Assistance Act [410 ILCS 405]
 - G) Illinois Power of Attorney Act [755 ILCS 45]
 - H) Alternative Health Care Delivery Act [210 ILCS 3]
 - I) Assisted Living and Shared Housing Act [210 ILCS 9]
 - 2) State of Illinois administrative rules:
 - A) Skilled Nursing and Intermediate Care Facilities Code (77 Ill. Adm. Code 300)

- B) Sheltered Care Facilities Code (77 Ill. Adm. Code 330)
- C) Illinois Veterans' Homes Code (77 Ill. Adm. Code 340)
- D) Intermediate Care for the Developmentally Disabled Facilities Code (77 Ill. Adm. Code 350)
- E) Medically Complex for the Developmentally Disabled Facilities Code (77 Ill. Adm. Code 390)
- F) Specialized Health Care Delivery Systems (89 Ill. Adm. Code 146)
- G) Assisted Living and Shared Housing Establishment Code (77 Ill. Adm. Code 295)

Section 389.110 Authorized Electronic Monitoring

- a) *A resident shall be permitted to conduct authorized electronic monitoring of the resident's room through the use of electronic monitoring devices placed in the room pursuant to the Act and this Part. (Section 10(a) of the Act)*
- b) *A facility that houses dementia residents may allow electronic monitoring devices only in rooms that are located in a building that is entirely dedicated to dementia care; or that are located in a building wing that is solely dedicated to dementia care. (Section 10(c) of the Act)*
- c) *Authorized electronic monitoring may begin only after a notification and consent form prescribed by the Department has been completed and submitted to the facility. (Section 20(a) of the Act)*
- d) *The completed notification and consent form must include, at minimum, the following information:*
 - 1) *The resident's signed consent to electronic monitoring or the signature of the person consenting on behalf of the resident in accordance with Section 15 of the Act and Section 389.115. If a person other than the resident signs the consent form, the form must document the following:*
 - A) *The date the resident was asked if he or she wants authorized electronic monitoring to be conducted in accordance with the Act and this Part;*

- 171 B) *Who was present when the resident was asked; and*
 172
 173 C) *An acknowledgement that the resident did not affirmatively object.*
 174
 175 2) *The resident's roommate's signed consent or the signature of the person*
 176 *consenting on behalf of the resident's roommate in accordance with*
 177 *Section 15 of the Act and Section 389.120, if applicable, and any*
 178 *conditions placed on the roommate's consent. If a person other than the*
 179 *resident's roommate signs the consent form, the form must document the*
 180 *following:*
 181
 182 A) *The date the roommate was asked if he or she wants authorized*
 183 *electronic monitoring to be conducted in accordance with the Act*
 184 *and this Part;*
 185
 186 B) *Who was present when the roommate was asked; and*
 187
 188 C) *An acknowledgement that the roommate did not affirmatively*
 189 *object.*
 190
 191 3) *The type of electronic monitoring device to be used;*
 192
 193 4) *Any installation needs, such as mounting of a device to a wall or ceiling;*
 194
 195 5) *The proposed date of installation for scheduling purposes;*
 196
 197 6) *A copy of any contract for maintenance of the electronic monitoring*
 198 *device by a commercial entity;*
 199
 200 7) *A list of standard conditions or restrictions that the resident or a*
 201 *roommate may elect to place on use of the electronic monitoring device,*
 202 *including, but not limited to:*
 203
 204 A) *Prohibiting audio recording;*
 205
 206 B) *Prohibiting broadcasting of audio or video;*
 207
 208 C) *Turning off the electronic monitoring device or blocking the visual*
 209 *recording component of the electronic monitoring device for the*
 210 *duration of an exam or procedure by a health care professional;*
 211

- D) *Turning off the electronic monitoring device or blocking the visual recording component of the electronic monitoring device while dressing or bathing is performed; and*
 - E) *Turning the electronic monitoring device off for the duration of a visit with a spiritual advisor, ombudsman, attorney, financial planner, intimate partner, or other visitor.*
- 8) *Any other condition or restriction elected by the resident or roommate on the use of an electronic monitoring device. (Section 20(b) of the Act)*
- e) *A copy of the completed notification and consent form shall be placed in the resident's and any roommate's clinical record and a copy shall be provided to the resident and his or her roommate, if applicable. (Section 20(c) of the Act)*
- f) *Nothing in the Act and this Part shall be construed to allow the use of an electronic monitoring device to take still photographs or for the nonconsensual interception of private communications. (Section 10(b) of the Act)*

Section 389.115 Consent of the Resident

- a) *A resident, a resident's plenary guardian of the person, or the parent of a resident under the age of 18 must consent in writing on a notification and consent form prescribed by the Department to the authorized electronic monitoring in the resident's room.*
- b) *A resident or resident's roommate may consent to authorized electronic monitoring with any conditions of the resident's choosing, including, but not limited to, the list of standard conditions provided in Section 389.110(d)(7).*
- c) *If the resident has not affirmatively objected to the authorized electronic monitoring and the resident's physician determines that the resident lacks the ability to understand and appreciate the nature and consequences of electronic monitoring, the following individuals may consent on behalf of the resident, in order of priority:*
 - 1) *A health care agent named under the Illinois Power of Attorney Act;*
 - 2) *A resident's representative;*
 - 3) *The resident's spouse;*
 - 4) *The resident's parent;*

- 5) *The resident's adult child who has the written consent of the other adult children of the resident to act as the sole decision maker regarding authorized electronic monitoring; or*
 - 6) *The resident's adult brother or sister who has the written consent of the other adult siblings of the resident to act as the sole decision maker regarding authorized electronic monitoring. (Section 15(a) of the Act)*
- d) *Prior to another person, other than a resident's plenary guardian of the person, consenting on behalf of a resident 18 years of age or older in accordance with subsection (b) of this Section, the resident must be asked by that person, in the presence of a facility employee, if he or she wants authorized electronic monitoring to be conducted. The person must explain to the resident:*
- 1) *The type of electronic monitoring device to be used;*
 - 2) *The standard conditions that may be placed on the electronic monitoring device's use, including those listed in Section 389.110(d)(7);*
 - 3) *With whom the recording may be shared according to Section 45 of the Act and Section 389.145; and*
 - 4) *The resident's ability to decline all recording. (Section 15(a-5) of the Act)*
- e) *For the purposes of this Section, a resident affirmatively objects when he or she orally, visually, or through the use of auxiliary aids or services declines authorized electronic monitoring. The resident's response must be documented on the notification and consent form. (Section 15(a-5) of the Act)*
- f) *A resident or resident's roommate may request that the electronic monitoring device be turned off or the visual recording component of the electronic monitoring device be blocked at any time. (Section 15(b) of the Act) The facility shall document any request by either the resident or the resident's roommate, or by the resident's or the roommate's representative, to turn off the electronic monitoring device or block the visual component of it. The facility shall place documentation of the request in the resident's and the resident's roommate's clinical records within 24 hours after the request.*

Section 389.120 Consent of the Roommate

- a) *Prior to the authorized electronic monitoring, a resident must obtain the written consent of any other resident residing in the room on the notification and consent*

form prescribed by the Department. Except as otherwise provided in this Section, a roommate, a roommate's plenary guardian of the person, or the parent of a roommate under the age of 18 must consent in writing to the authorized electronic monitoring in the resident's room.

- b) *If the roommate has not affirmatively objected to the authorized electronic monitoring in accordance with the Act and this Section, and the roommate's physician determines that the roommate lacks the ability to understand and appreciate the nature and consequences of electronic monitoring, the following individuals may consent on behalf of the roommate, in order of priority:*
 - 1) *A health care agent named under the Illinois Power of Attorney Act;*
 - 2) *A roommate's resident's representative;*
 - 3) *The roommate's spouse;*
 - 4) *The roommate's parent;*
 - 5) *The roommate's adult child who has the written consent of the other adult children of the resident to act as the sole decision maker regarding authorized electronic monitoring; or*
 - 6) *The roommate's adult brother or sister who has the written consent of the other adult siblings of the resident to act as the sole decision maker regarding authorized electronic monitoring. (Section 15(c) of the Act)*
- c) *Consent by a roommate under this Section authorizes the resident's use of any recording obtained under the Act, as provided in Section 45 of the Act and Section 389.135(d) of this Part. (Section 15(c-5) of the Act)*
- d) *Any resident previously conducting authorized electronic monitoring must obtain written consent from any new roommate before the resident may resume authorized electronic monitoring. If a new roommate does not consent to authorized electronic monitoring, the device shall be turned off by the resident or the resident's representative. If the resident conducting the authorized electronic monitoring does not remove or disable the electronic monitoring device, the facility may turn off the device and shall note the date, time, and reason in the resident's record. (Section 15(c-7) of the Act)*
- e) *Consent may be withdrawn by the resident or roommate at any time, and the withdrawal of consent shall be documented in the resident's clinical record. If a roommate withdraws consent and the resident conducting the authorized*

electronic monitoring does not remove or disable the electronic monitoring device, the facility may turn off the electronic monitoring device and shall note the date, time, and reason in the resident's record. (Section 15(d) of the Act)

- f) *If a resident who is residing in a shared room wants to conduct authorized electronic monitoring and another resident living in or moving into the same shared room refuses to consent to the use of an electronic monitoring device, the facility shall make a reasonable attempt to accommodate the resident who wants to conduct authorized electronic monitoring. A facility has met the requirement to make a reasonable attempt to accommodate a resident who wants to conduct authorized electronic monitoring when upon notification that a roommate has not consented to the use of an electronic monitoring device in his or her room, the facility offers to move either resident to another shared room that is available at the time of the request. If a resident chooses to reside in a private room in order to accommodate the use of an electronic monitoring device, the resident must pay the private room rate. If a facility is unable to accommodate a resident due to lack of space, the facility must reevaluate the request every 2 weeks until the request is fulfilled. (Section 15(e) of the Act)*

Section 389.125 Cost and Installation

- a) *A resident choosing to conduct authorized electronic monitoring shall do so at his or her own expense, including paying purchase, installation, maintenance, and removal costs. (Section 25(a) of the Act) The facility may include language in its standard admission contract that:*
- 1) *Requires professional installation by a contractor of an electronic monitoring device that requires physical alteration of a resident's room or hardwiring into the facility's electrical system;*
 - 2) *Requires a contractor, if required, be licensed by the appropriate local level of government;*
 - 3) *Requires the resident to pay any reasonable costs associated with correcting installation errors that violate NFPA 101, NFPA 70, and the International Building Code;*
 - 4) *Requires that the resident pay any reasonable costs associated with removal of an electronic monitoring device, including wall repair, in the event that the resident or a roommate withdraws consent, or a new roommate withholds consent, as a condition of electronic monitoring;*

- 5) Requires a damage deposit from the resident as a condition of installing electronic monitoring; and
 - 6) Provides for the removal and confiscation of an electronic monitoring device that is installed in violation of the Act and this Part, including compliance with NFPA 101, NFPA 70, and the International Building Code as a condition of electronic monitoring.
- b) *If a resident chooses to install an electronic monitoring device that uses Internet technology for visual or audio monitoring, that resident is responsible for contracting with an Internet service provider. (Section 25(b) of the Act)*
 - c) *The facility shall make a reasonable attempt to accommodate the resident's installation needs, including, but not limited to, allowing access to the facility's telecommunications or equipment room. A facility has the burden of proving that a requested accommodation is not reasonable. (Section 25(c) of the Act)*
 - d) *The electronic monitoring device shall be placed in a conspicuously visible location in the room. (Section 25(d) of the Act)* An electronic monitoring device capable of visual recording shall not be directed toward the bed or living area of any resident who has not consented to the authorized electronic monitoring.
 - e) *A facility shall not charge the resident a fee for the cost of electricity used by an electronic monitoring device. (Section 25(e) of the Act)*
 - f) *All electronic monitoring device installations and supporting services shall comply with the requirements of the NFPA 101, NFPA 70, and the International Building Code. (Section 25(f) of the Act)*

Section 389.130 Signage

- a) *If a resident of a facility conducts authorized electronic monitoring, a sign shall be clearly and conspicuously posted at all building entrances accessible to visitors. The notice must be entitled "Electronic Monitoring" and must state, in large, easy-to-read type, "The rooms of some residents may be monitored electronically by or on behalf of the residents." (Section 30(a) of the Act)* This sign shall be a minimum of 8.5 inches x 11 inches.
- b) *A sign shall be clearly and conspicuously posted at the entrance to a resident's room where authorized electronic monitoring is being conducted. The notice must state, in large, easy-to-read type, "This room is electronically monitored." (Section 30(b) of the Act)* This sign shall be a minimum of 5 inches x 7 inches.

c) Signs posted at the entrance to the building and at the entrance to residents' rooms shall also state that electronic monitoring equipment may be turned off only by the resident or the person who consented on behalf of the resident or, if by the facility, under the following conditions:

- 1) When a resident does not turn off in the instance of no consent from the roommate and the resident does not make an effort to turn off the electronic monitoring equipment, or
- 2) When directed by the resident or the resident's representative.
- 3) *The facility is responsible for installing and maintaining the signage required in this Section.* (Section 30(c) of the Act)

Section 389.135 Obstruction of Electronic Monitoring Devices

- a) *A person or entity is prohibited from knowingly hampering, obstructing, tampering with, or destroying an electronic monitoring device installed in a resident's room without the written permission of the resident or the individual who consented on behalf of the resident in accordance with the Act and this Part.* (Section 40(a) of the Act)
- b) *A person or entity is prohibited from knowingly hampering, obstructing, tampering with, or destroying a video or audio recording obtained in accordance with this Act without the written permission of the resident or the individual who consented on behalf of the resident in accordance with the Act and this Part.* (Section 40(b) of the Act)
- c) *It is not a violation of the Act or this Section if a person or facility turns off the electronic monitoring device or blocks the visual recording component of the electronic monitoring device at the direction of the resident or the person who consented on behalf of the resident in accordance with Section 15 of the Act and Section 389.115.* (Section 40(d) of the Act)
- d) The Department will forward all credible complaints of violations of the Act and this Part to the Office of the Attorney General for further action.

Section 389.140 Dissemination of Recordings

- a) *A facility may not access any video or audio recording created through authorized electronic monitoring without the written consent of the resident or the person who consented on behalf of the resident in accordance with Section 15 of the Act and Section 389.115.* (Section 45(a) of the Act)

469
470
471
472
473
474
475
476
477
478
479

- b) *The resident or person who consented on behalf of the resident in accordance with Section 15 of the Act and Section 389.115 shall provide a copy of any video or audio recording to parties involved in a civil, criminal, or administrative proceeding, upon a party's request, if the video or audio recording was made during the time period that the conduct at issue in the proceeding allegedly occurred. (Section 45(c) of the Act)*
- c) *Each facility shall report to the Department, in a manner prescribed by the Department, the number of authorized electronic monitoring notification and consent forms received annually. (Section 55 of the Act)*